

Dated: 4/25/2017

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE

In Re:

Wayne Charles Baker and Jan Marie Baker

Debtors.

Case No. 16-00014-MFH

Chapter 13

Judge Harrison

**AGREED ORDER DENYING TRUSTEE'S MOTION TO DISALLOW CLAIM AND  
PROHIBITING THE ASSESSMENT OF FEES, COSTS, OR SET-OFF**

This matter came on for a scheduled hearing on April 19<sup>th</sup>, 2017, upon the Trustee's Motion to Disallow In Part Claim of Seterus, Inc. ("Seterus") at Docket Entry No. 76, with objection by Seterus. This hearing was continued from April 12, 2017, continued from March 8, 2017, continued from February 8, 2017, continued from January 11, 2017, continued from December 21, 2017, continued from December 14, 2016, continued from November 23, 2016.

The debtors filed the above-captioned Chapter 13 case on January 4, 2016. The Order Confirming plan was entered on August 5, 2016, ("Confirmation Order"). The Confirmation Order provided for Seterus, Inc. to be paid by the Trustee as a long-term Section 1322(b)(5) claim. A proof of claim was filed by the debtor on behalf of Seterus on June 14, 2016, designated as Claim 10 on the Court's claims register.

On October 6, 2016, the Chapter 13 Trustee filed a motion to disallow Court Claim 10 in part. Seterus as servicer for Federal National Mortgage Association ("Creditor") filed an objection to the Trustee's Motion to Disallow in Part.

Debtors' counsel joins in this Order for the purpose of resolving the pending motion by the Chapter 13 Trustee and without prejudice as to any claim by the debtors.

By agreement of the Chapter 13 Trustee, Seterus, and the debtors, the Chapter 13 Trustee's objection is resolved and Court Claim 10 is amended as follows:

The prepetition arrearage is allowed in the amount of \$43,868.47. The prepetition arrears are itemized as follows:

Principal & Interest due	\$22,409.46 (18 missed pre-petition payments)
Fees due	\$3,351.17
Escrow deficiency	\$16,723.41
Escrow shortage	\$3,236.03
Funds on hand	\$1,851.60

The post-petition/pre-confirmation "GAP" payments total \$13,127.10, or \$1,875.30 monthly for February 2016 through August 2016.

The trustee has paid the continuing post-confirmation mortgage payments at \$1,861.65 for September 2016 through January 2017 for a total of \$9,308.25. Seterus agrees to waive any underpayment during this time period.

Pursuant to the Order Rescheduling Hearing on the Trustee's Application to Disallow entered on January 18, 2017 at docket entry 104, Seterus "shall be sanctioned one (1) monthly payment for each calendar month in which this matter is delayed upon its request which may be applied as a set-off against the amount paid to the creditor under the debtors' plan."

Pursuant to the Order Rescheduling Hearing on Trustee's Application to Disallow in Part entered on February 15, 2017 at docket entry 107 the ongoing mortgage payment is set at \$2,009.80.

Accordingly, based on the above terms, the parties consent to resolve the Trustee's Motion to disallow in part.

It is, therefore,

ORDERED, the Trustee's Motion to Disallow the Claim is denied; it is further

ORDERED, that Court Claim 10 is hereby amended: the pre-petition arrearage claim through January 2016 is \$43,868.47; it is further

ORDERED, the post-petition/pre-confirmation "gap" payments are \$13,127.10 for February 2016 through August 2016 in the amount of \$1,875.30 each; it is further

ORDERED, Seterus acknowledges receipt of payments from the Chapter 13 Trustee for the post-confirmation continuing mortgage payment for September 2016 through the January 2017 in the amount of \$1,861.65 each for a total of \$9,308.25; it is further

ORDERED, the Trustee has disbursed the post-confirmation continuing payments to Seterus for March 2017 and April 2017 in the amount of \$2,009.80.

ORDERED, the Creditor, Seterus, and any successor Servicer for such creditor shall waive any underpayments of the mortgage payments due for September 2016 through January 2017 and are forever barred from assessing or collecting any underpayment; it is further

ORDERED, Seterus, the Creditor, and any successor Servicer for such creditor are prohibited and forever barred from assessing or collecting any fees, costs, or set-off amounts against the debtor or against the property that serves as collateral for its loan in connection with the motion resolved by this agreed order; it is further

ORDERED, Debtors' counsel joins in this Order for the purpose of resolving the pending motion by the Chapter 13 Trustee and without prejudice as to any claim by the debtors.

ORDERED, per the continuance order entered on January 18, 2017, the Trustee is entitled to set-off, (3 months), the February 2017, May 2017 and June 2017 payments by \$2,009.80 each for Seterus requests to reschedule this hearing; it is further

ORDERED, pursuant to the February 15, 2017 Order Rescheduling, the ongoing mortgage payment is \$2,009.80 until a timely Notice of Mortgage Payment Change is filed; it is further

ORDERED, as of the entry of this Agreed Order, as a result of the monthly set-off provided for in the January 18, 2017 Order, the loan is due for the July 2017 postpetition payment in the amount of \$2,009.80, unless a timely Notice of Mortgage Payment change is filed; it is further

ORDERED, Seterus, must adjust their records to reflect a postpetition continuing payment due date of July 2017; and it is further

ORDERED, the Trustee shall commence the ongoing monthly disbursement to Seterus with the Trustee's June disbursement for the July 2017 payment.

THIS ORDER WAS SIGNED AND ENTERED  
ELECTRONICALLY AS INDICATED AT THE  
TOP OF THE FIRST PAGE.

**APPROVED FOR ENTRY:**

/s/ Bonnie Culp

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/s/ Henry E.  
Hildebrand, III

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This Order has been electronically  
signed. The Judge's signature and  
Court's seal appear at the top of the  
first page.  
United States Bankruptcy Court.